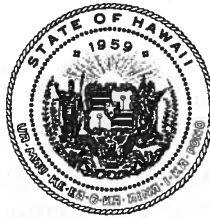


DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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HONOLULU, HAWAII 96809

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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

January 22, 2016

John Armor  
Acting Director  
NOAA Office of National Marine Sanctuaries  
1305 East-West Highway, 11th Floor  
Silver Spring, MD 20910

Dear Mr. Armor,

The State of Hawai'i is extremely proud of the tremendous collective work the Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary) has done over the last twenty years to protect humpback whales through a range of management, research, education, and community efforts.

The State of Hawai'i also commends the Office of National Marine Sanctuaries (ONMS) for wanting to do more to improve the management of Hawaii's fragile natural and cultural resources.

As outlined in the State's comment letter of June 19, 2015 and in discussions with ONMS over the past years, DLNR is concerned that the proposed expansion to an ecosystem-based sanctuary, which provides a new definition of sanctuary resources, could restrict the State's ability to recover damages for violations of the state laws and rules governing its natural resources by giving NOAA primary jurisdiction to prosecute cases for damage to any sanctuary resource within the boundaries of the Sanctuary. While we understand that NOAA disagrees with this conclusion, nonetheless, the State has strong laws and regulations governing natural resource damage in marine waters and has successfully prosecuted and recovered substantial amounts for mitigation, restoration, and damages. Thus, as the trustee of Hawaii's natural resources, cultural resources, and submerged lands, the State of Hawai'i supports an ecosystem-based management *approach* but cannot endorse federal jurisdiction or enforcement in Hawaiian waters at this scale.

As a result, we feel that ONMS can add the most value by bringing additional management capacity (e.g., personnel, enforcement, equipment, planning, research, outreach) to support the conservation of Hawaii's marine mammals, and so have proposed the following definition of sanctuary resources: "any marine mammal within the boundaries of the Sanctuary."

We believe that this expanded definition allows the Sanctuary to build further on its unique strengths, such as its one-of-a-kind entanglement response program, its innovative outreach programs, and its unique ability to build partnerships with ocean users. This definition of sanctuary resources also allows the Sanctuary to incorporate additional non-regulatory activities into its programs, such as citizen science water quality monitoring conducted in partnership with the Department of Health, which can inform management of Hawaii's nearshore habitat to benefit the health of our marine mammals.

However, we understand that a marine mammal sanctuary, without the attendant inclusion of habitat, may not fit the goals and policies of ONMS more broadly. We note that protection for humpback whales and their habitat was included as one of the original purposes of the Hawaiian Islands National Marine Sanctuary Act (sections 2301-2307 of Pub. L. 102-587) when Congress designated the sanctuary in 1992. However, given the manner in which humpback whales use Hawaii's habitat (for breeding and calving, as opposed to feeding), the authority for ONMS to manage humpback whale habitat has been limited. Including the habitat of all Hawaii's marine mammals, in contrast, would significantly extend jurisdiction and risk duplication with existing state regulations. For example, monk seals prey on over 300 different fish and invertebrates both in nearshore waters and in depths of up to 1800 feet. Thus, for the reasons outlined above, the State of Hawai'i cannot include marine mammal "habitat" in the sanctuary resources definition and regret that we are not able to move forward with a broader habitat definition of sanctuary resources.

Therefore, after thoroughly reviewing the proposed rule, Draft Environmental Impact Statement, and Draft Management Plan put forth by ONMS in March 2015, the Department of Land and Natural Resource (DLNR) continues to believe that the Sanctuary should focus on complementing existing state functions and supporting existing management efforts of communities, non-governmental organizations, partner agencies, and other institutions rather than duplicating existing regulatory authority and programmatic efforts.

Based on the above, this letter hereby serves to confirm our agreement that the Hawaiian Islands Humpback Whale National Marine Sanctuary will continue in its current form.

We also want to recognize the tremendous dedication and commitment of the Sanctuary Advisory Council (SAC), who has worked tirelessly throughout the Sanctuary's Management Plan Review process to guide and advise sanctuary management. We understand that the outcome of this process may be a disappointment to some, but feel strongly that all the SAC has accomplished, such as producing the Aloha 'Āina Guidance Document and Working Group reports, will continue to inform sanctuary management and all resource managers more broadly. We look forward partnering with and drawing on the tremendous depth of expertise of the SAC as the Sanctuary enters this new chapter.

We look forward to our continued partnership with ONMS and on working together to build upon the accomplishments of the Sanctuary, including improving the humpback whale approach rule and implementing innovative programs to enhance stewardship of Hawaii's humpback whales and other marine resources. The DLNR is also committed to working with all parts of NOAA, as well as communities and ocean users, to build upon the successes of the Sanctuary

and better manage all of our protected species – including by addressing the threat of harassment to spinner dolphins and of toxoplasmosis to Hawaiian monk seals and other marine mammals.

Lastly, the DLNR looks forward to highlighting the successes of the Sanctuary, particularly its world-renown entanglement response program, at the World Conservation Congress coming to Hawaii in September.

Sincerely,

A handwritten signature in black ink, appearing to read 'Suzanne Case', written in a cursive style.

Suzanne Case  
Chairperson

